

Remarks

The Office Action mailed May 15, 2008 has been carefully considered. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Claims 1-31 are currently pending. Claims 1, 8, 17, 24, and 25 have been amended to clarify the claimed subject matter. Support for the within claim amendments may be found at, *inter alia*, page 11, line 4 to page 12, line 2, page 14, line 6 to page 15, line 9, and page 17, lines 16 to 22 of the Specification.

In making the within claim amendments, Applicants are clarifying the claimed subject matter and is not acquiescing as to the validity and/or correctness of the rejections of the subject application and/or of the characterizations of the prior art in the Office Action. The within claim amendments are not intended to, and do not result in disclaimer, waiver, and/or estoppel vis-à-vis claim scope and/or equivalents.

In the Office Action, the Examiner has rejected claims 1-2, 5-18, and 21-31 under 35 USC §103 as being unpatentable over Yu (U.S. 5,764,903) in view of Skazinski et al. (U.S. 6,574,709 B1) and in further view of Beardsley et al. (U.S. Patent Publication No. 2004/0260970). The Examiner has also rejected claims 3, 4, 19, and 20 under 35 USC §103 as being unpatentable over Yu (previously cited) in view of Skazinski et al. (previously cited) and Beardsley et al. (previously cited), and in further

view of what the Examiner asserts to be technology “well known in the art.”¹ Office Action, page 9. Applicants respectfully submit that these rejections of the claims, as amended, cannot be maintained, and should be withdrawn.

All claim limitations must be considered material in judging the patentability of the claims against the prior art. MPEP §2143.03; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). In determining the differences between the prior art and the claims, the question under 35 USC §103 is not whether the differences themselves would have been obvious, but whether the claimed combination of limitations, as a whole, would have been obvious. MPEP §2141.02; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976). Rejections based on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with factual rationale to support a *prima facie* case of obviousness. In order for that reasoning and rationale to be proper, among other things, all of the claim limitations must be taught or suggested in the art relied upon by the Examiner. MPEP §2141 III; *KSR International v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

Suffice to it to note that none of these prior patent documents or allegedly well known art, whether taken singly or in combination, can be said to disclose or suggest

¹ At pages 9-10 of the Office Action, the Examiner asserts that use of various RAID levels are well known in the art. Applicants do not acquiesce as to the validity and/or correctness of these assertions by the Examiner. However, even assuming, for the sake of argument, that the Examiner is correct in making these assertions, no combination of this allegedly well know art with the prior patent documents of record would result in the claimed invention, at least for the reasons presented herein.

the specific combination of features found in Applicants' claimed invention. For example, independent method claim 8, as amended, recites:

A method, comprising:

receiving an input/output (I/O) request to write data stored on at least one target device comprised in at least one local storage array;

generating one or more I/O transactions to write data on at least one target device comprised in at least one remote storage array;

storing in a circuit card and incrementing a counter including a plurality of bits corresponding to a plurality of data blocks transmitted during said one or more I/O transactions if said plurality of data blocks were not successfully written to said at least one remote storage array;

clearing said plurality of bits of said counter if said data blocks are successfully written to said at least one remote storage array; and

generating and storing in said at least one local storage array, if the at least one remote storage array is inoperative during said one or more I/O transactions, a bitmap image representing data that is to be written to said at least one remote storage array. (Independent claim 8, as amended).

Thus, in Applicants' claim 8, as amended, (1) if the data blocks were not successfully written to the at least one remote storage array, a counter (that includes a plurality of bits that correspond to the plurality of data blocks transmitted during the one or more I/O transactions) is stored in a circuit card and incremented, (2) if the data

blocks are successfully written to the at least one remote storage array, the plurality of bits of the counter are cleared, and (3) if the at least one remote storage array is inoperative during the one or more I/O transactions, a bitmap representing data that is to be written to the at least one remote storage array is generated and stored in the at least one local storage array. See claim 8, as amended. All of the other currently pending independent claims, as amended, contain these limitations of claim 8, as amended, or similar limitations. Therefore, all of the currently pending claims, as amended, contain these limitations of claim 8, as amended, or similar limitations, either directly or by depending from one of the independent claims, as amended. 35 USC §112, fourth paragraph.

These differences between these prior patent documents, and the allegedly “well know” art cited by the Examiner at pages 9-10 of the Office Action, relied upon by the Examiner and Applicants’ claimed invention are not merely academic. For example, although the limitations in the claims, as amended, are not limited to or bound by embodiments disclosed in the Specification, in an embodiment disclosed in Applicants’ Specification, the above limitations of the claimed invention that are not disclosed or suggested in the prior patent documents and the allegedly well known art relied upon by the Examiner permit this embodiment to operate in a manner that is different from and advantageous compared to the technology disclosed in these prior patent documents and this allegedly “well known” art. See, e.g., page 11, line 4 to page 12, line 2, page 14, line 6 to page 15, line 9, and page 17, lines 16 to 22 of the Specification.

Accordingly, since these advantageous features of the claimed invention are nowhere disclosed or suggested in these prior patent documents and the allegedly well known art, it is respectfully submitted that none of the prior patent documents and allegedly well known art, whether taken singly or in any combination, would anticipate or render obvious the claimed invention. Therefore, it is respectfully submitted that the Examiner's rejections of combinations of the claims, as amended, under 35 USC 103 as being unpatentable over various combinations of Yu, Skazinski et al., Beardsley et al., and the allegedly well known art cannot be maintained and should be withdrawn.

In the event that the Examiner believes that a telephone interview would advance the prosecution of this application, the Examiner is invited to call the undersigned attorney to initiate an interview.

In the event that any fees are due or payable in connection with this submission or in this application (including any applicable extension of time for response fees) please charge them to Deposit Account No. 50-4238. Likewise, please credit any overcharges to Deposit Account No. 50-4238.

Respectfully submitted,

Dated: July 11, 2008

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